

Rule 8, Ariz. R. Crim. P.

SPEEDY TRIAL — Sanctions for Rule 8 violations — Revised 10/2009

While violations of a defendant's Federal constitutional right to a speedy trial mandate dismissal with prejudice¹, violations of Rule 8, Ariz. R. Crim. P., do not automatically require the same dismissal with prejudice:

It does not follow . . . that the relief to be afforded a person for the violation of the admittedly more strict Arizona speedy trial requirements is the same as that provided by the United States constitutional requirements of speedy trial. . . . [W]e cannot enforce a rule whereby even minor violations of the time limits must result in the automatic dismissal [with prejudice] of the case and the release of the accused. It is not the purpose of the speedy trial provision to enable the guilty to go free on technicalities.

State ex rel. Berger v. Superior Court, 111 Ariz. 335, 339-40, 529 P.2d 686, 691-92 (1974).

Instead, while Rule 8.6, Ariz. R. Crim. P., mandates a dismissal for violation of a Rule 8 time limit, that dismissal may be either with or without prejudice:

Violations. If the court determines after considering the exclusions of Rule 8.4, that a time limit established by Rules 8.2(a), 8.2(b), 8.2(c), 8.2(d), 8.3(a), 8.3(b)(2), or 8.3(b)(3) has been violated, it shall on motion of the defendant, or on its own initiative, dismiss the prosecution *with or without prejudice*.

[Emphasis added.]

The trial court has discretion to determine whether a dismissal for a Rule 8 violation is with or without prejudice. *Humble v. Superior Court*, 179 Ariz. 409, 415, 880 P.2d 629, 635 (App. 1993). In *State v. Mendoza*, 170 Ariz. 184, 187, 823 P.2d 51, 54 (1992), the Arizona Supreme Court explained Rule 8.6:

The remedy for a violation of this "speedy trial" time limit is dismissal of defendant's prosecution with or without prejudice. Rule 8.6; *State v. Mitchell*, 112 Ariz. 592, 593, 545 P.2d 49, 50 (1976). The trial court has sole discretion to determine whether the dismissal is with or

¹ *Barker v. Wingo*, 407 U.S. 514 (1972).

without prejudice. Rule 8.6; *State ex rel. DeConcini v. Superior Court*, 25 Ariz.App. 173, 175, 541 P.2d 964, 966 (1975). If a case against a criminal defendant is dismissed without prejudice and is later refiled by the state, the 150-day time limit begins anew. *Johnson v. Tucson City Court*, 156 Ariz. 284, 287, 751 P.2d 600, 603 (App.1988); *State v. Rose*, 121 Ariz. 131, 137, 589 P.2d 5, 11 (1978).

Humble v. Superior Court, 179 Ariz. 409, 416, 880 P.2d 629, 636 (App.

1993), cited the four inquiries² that a court should consider in determining whether to dismiss a case for a federal due process violation:

- (1) whether delay before trial was uncommonly long;
- (2) whether the government or the criminal defendant is more to blame for that delay;
- (3) whether, in due course, the defendant asserted his right to a speedy trial; and
- (4) whether he suffered prejudice as the delay's result.

The *Humble* court explained that the first prong is a "trigger"; a defendant must assert that the delay between indictment and trial is "presumptively prejudicial." *Id.* at 416, 880 P.2d at 636. The Court noted that lower courts have found delay "presumptively prejudicial" as it approaches one year. *Id.* The presumption that delay in prosecution has prejudiced a defendant "intensifies over time." *Id.* The *Humble* court then reasoned that courts in Arizona should consider the same factors in determining whether to dismiss with or without prejudice for a violation of Rule 8, Ariz. R. Crim. P. *Id.*

In *State v. Garcia*, 170 Ariz. 245, 248, 823 P.2d 693, 696 (Ariz.App. 1991), the Court of Appeals stated, "the same considerations discussed in the cases construing Rule 16³, govern whether a Rule 8 violation should be with or without

² As previously set forth in *Doggett v. U.S.*, 505 U.S. 647 (1992).

prejudice. Under Rule 16, if the defendant can show that the state delayed for the purpose of gaining a tactical advantage over him or to harass him, and if he can show that he actually suffered prejudice as a result of the state's conduct, a dismissal with prejudice is justified. Rule 16(d), Ariz. R. Crim. P. Whether a delay on the part of the state warrants dismissal for violation of the right to a speedy trial requires an analysis of several factors, including: "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant". *State v. Medina*, 190 Ariz. 418, 422 n. 3, 949 P.2d 507, 511 n. 3 (App. 1997), *citing Barker v. Wingo*, 407 U.S. 514, 530 (1972).

To demonstrate the "prejudice to the defendant" factor, the defendant must show that his ability to present his defense was harmed by the delay:

The specific test for prejudice when a speedy trial violation occurs is whether defendant has shown that his defense has been harmed by the delay; it is not sufficient for a defendant to contend that the state may not have made its case had the trial proceeded without the continuance. *State v. Kasten*, 170 Ariz. 224, 226-27, 823 P.2d 91, 93-94 (App.1991); *State v. Zuck*, 134 Ariz. 509, 514-15, 658 P.2d 162, 167-68 (1982).

State v. Vasko, 193 Ariz. 142, 147, 971 P.2d 189, 194 (App. 1998).

In *State v. Spreitz*, 190 Ariz. 129, 140, 945 P.2d 1260, 1271 (1997), the defendant was not tried until almost five years after he was indicted. The defendant claimed that the delay violated his constitutional rights to a speedy trial. The Arizona Supreme Court rejected that argument, noting that although five years in custody may have increased his personal anxiety, it in no way prejudiced his capacity to defend against the claims of the state. *Id.* at 140, 945 P.2d at 1271. While *Spreitz* dealt with the constitutional right to a speedy trial, the analysis is the same under

³ Rule 16(d), Ariz. R. Crim. P., provides: "Dismissal of a prosecution shall be without prejudice to commencement of another prosecution, unless the court order finds that the interests of justice require that the dismissal be with prejudice."

Rule 8, Ariz. R. Crim. P., as to the nature of the prejudice the defendant must establish to show that his case should be dismissed with prejudice.